

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE <i>ex rel.</i> ,)
M. JANE BRADY, Attorney General) C.A. No. 99C-09-168 - JTV
of the State of Delaware,)
)
Plaintiff,)
)
v.)
)
WELLINGTON HOMES, INC., a Delaware)
corporation, WELLINGTON HOMES, L.L.C., a)
Delaware limited liability corporation, 397 PRO-)
PERTIES, L.L.C., a Delaware limited liability)
corporation, CHRISTIANA VENTURES, INC., a)
Delaware corporation, ALBERT VIETRI, TINA)
MARIE VIETRI, JOSEPH L. CAPANO, II and)
JOSEPH L. CAPANO,)
)
Defendants.)

Submitted: July 27, 2005

Decided: November 29, 2005

Olha N.M. Rybakoff, Esq., Department of Justice, Wilmington Delaware. Attorney for the State of Delaware.

Defendants Wellington Homes, Inc., Wellington Homes, L.L.C., 397 Properties, L.L.C., and Albert A. Vietri, and Tina Marie Vietri, *Pro se*.

Adam Balick, Esq., Balick & Balick, Wilmington, Delaware. Attorney for Defendants Christiana Ventures, Inc., and Joseph Capano.

Richard H. Cross, Jr., Esq., Wilmington, Delaware. Attorney for Defendant Joseph Capano.

State v. Wellington Homes
C.A. No. 99C-09-168 - JTV
November 29, 2005

*Upon Consideration of the Motion for Judgment as a
Matter of Law and Motion for New Trial Filed by
Defendants Wellington Homes, Inc., Wellington Homes, L.L.C.,
397 Properties, L.L.C., Albert A. Vietri and Tina Marie Vietri*

DENIED

VAUGHN, President Judge

ORDER

Upon consideration of the Motion for Judgment as a Matter of Law and Motion for New Trial filed by defendants Wellington Homes, Inc., Wellington Homes, L.L.C., 397 Properties, L.L.C., Albert A. Vietri and Tina Marie Vietri, the plaintiff's opposition, and the record of the case, it appears that:

1. Jury selection and trial in the above-captioned matter began on October 12, 2004 and ended with the return of a jury verdict on December 7, 2004. The jury concluded that defendants Wellington Homes, Inc., Wellington Homes, L.L.C., 397 Properties, L.L.C., Albert A. Vietri and Tina Marie Vietri had each violated the Delaware Consumer Fraud and Deceptive Trade Practices Acts in connection with new homes constructed in a residential subdivision known as Lea Eara Farms. It further concluded that the defendants had committed, respectively, the following number of willful violations of the Consumer Fraud Act: Wellington Homes, Inc./Wellington Homes, L.L.C., 12; 397 Properties, L.L.C., 15; Albert A. Vietri, 15; and Tina Marie Vietri, 7. Under the Consumer Fraud Act, a party found to have committed a willful violation of the Act shall forfeit and pay to the State a civil penalty of not more than \$10,000 for each violation. The jury assessed a civil penalty

State v. Wellington Homes
C.A. No. 99C-09-168 - JTV
November 29, 2005

against the defendants, respectively, as follows: Wellington Homes, Inc./Wellington Homes L.L.C., \$55,571; 397 Properties, L.L.C., \$46,030; Albert A. Vietri, \$46,030; and Tina Marie Vietri, \$18,793. The defendants move post-trial for judgment as a matter of law and for a new trial. Defendants Joseph L. Capano II, Christiana Ventures, Inc., and Joseph L. Capano join in the motion.

2. When a motion for judgment as a matter of law is made by the defendant, it is the duty of the trial judge to determine whether, under any reasonable interpretation of the evidence, the jury could justifiably find in favor of the plaintiff and against the defendant.¹ The evidence must be viewed in the light most favorable to the non-moving party.² When reviewing a motion for new trial, the jury's verdict is entitled to "enormous deference."³ Traditionally, "the court's power to grant a new trial has been exercised cautiously and with extreme deference to the findings of the jury."⁴ In the absence of exceptional circumstances, the validity of damages determined by the jury should be presumed.⁵ This Court will not upset the verdict unless the evidence preponderates so heavily against the jury verdict that a

¹ *Ebersole v. Lowengrub*, 208 A.2d 495 (Del. 1965).

² *Russell v. Kanaga*, 571 A.2d 724 (Del. 1990).

³ *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997) (*citing* the Delaware Constitution, Art. IV, § 11(1)(a)).

⁴ *Maier v. Santucci*, 697 A.2d 747, 749 (Del. 1997).

⁵ *Littrel v. Hanby*, 1998 Del. Super. Lexis 10 at *3-4, *citing Young*, 702 A.2d at 1236-37.

reasonable jury could not have reached the result.⁶

3. In support of their motion for judgment as a matter of law, the defendants contend that there was no legally sufficient evidentiary basis for the jury's verdict against them. In their motion they address the evidence on a home by home, and category of alleged violation by category, approach. They also contend that there is insufficient evidence that any violation of the Acts was willful; that there was insufficient evidence to support individual liability of the defendants; that alleged post-sale representations should not have been considered by the jury; and that the jury was permitted to award duplicative penalties. However, I am not persuaded that an extensive, home by home, category by category, analysis of the evidence is necessary. The issue is whether the evidence is sufficient to support the verdict which was ultimately rendered against each defendant. I am satisfied that there was ample evidence to support the jury's conclusion that each defendant committed at least the number of willful violations of the Consumer Fraud Act attributed to each and at least one violation of the Deceptive Trade Practices Act. I also conclude that the amount of civil penalty assessed is not excessive and is supported by the evidence.

4. In support of their motion for a new trial, the defendants allege that the Court improperly admitted non-probative evidence of bad faith; that the Court improperly gave a non-responsive answer to a jury question during the jury's deliberations; and that the Court should not allow a partial re-trial as to defendant

⁶ *Id.* at 465.

State v. Wellington Homes
C.A. No. 99C-09-168 - JTV
November 29, 2005

Joseph L. Capano. The jury was unable to reach a verdict as to this latter defendant. After considering each of these contentions, I have concluded that none of the grounds asserted affect a substantial right of the defendants or warrant setting the verdict aside. In addition, I am satisfied that a re-trial of defendant Joseph L. Capano can be conducted separately without prejudice to any defendant.

5. Accordingly, the defendants' motion for judgment as a matter of law and motion for a new trial is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
C. Scott Reese, Esq.
File